IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22531 of 2006
With
CIVIL APPLICATION No. 12153 of 2006
AND
CIVIL APPLICATION No. 491 of 2007

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHADARVA KELVANI MANDAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AJ SHASTRI for Petitioner(s) : 1,
MS ASMITA PATEL, AGP for Respondent(s) : 1,
MR SD SUTHAR for MR NK MAJMUDAR for Respondent(s) : 2,
DS AFF.NOT FILED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 22/02/2007

ORAL JUDGMENT

RULE returnable today. Mr.Suthar and Ms.Patel waive service of rule. With the consent of the

learned advocates, the petition is heard and disposed of today.

This petition has been preferred by Bhadarva Kelavani Mandal, an educational institution, against the order dated 1st September, 2006 made by the Assessing Officer, Regional Provident Fund Commissioner, Vadodara, under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as, **"the Act of 1952"**). According to the Assessing Officer, the petitioner-Institution was in default of EPF dues for the period from August, 1982 to September, 2004 to the extent of Rs.11,99,490=00.

After long winding arguments, it is precipitated that the aforesaid dues are calculated in respect of six employees engaged by the petitioner in its primary section. The gravamen of the grievance made by the petitioner is that the teachers in the primary section are governed by the pension scheme of the State Government. The petitioner is, therefore, neither liable to deduct the employees' provident

fund nor to make employer's contribution. The amount admitted by the petitioner is already paid under the order of this Court made on 12th December, 2006 in Civil Application No.12153/2006.

Ms.Patel has produced copy of the Government Resolution dated 6th April, 2002. It is evident that by the said Resolution the State Government has extended its pension scheme to the teaching staff of the grant-in-aid primary schools with effect from 1st January, 1997. It is, therefore, apparent that from 1st January, 1997 the teachers in the grant-in-aid primary schools would not be governed by the Act of 1952. Admittedly, the respondent authority has not taken into consideration the above referred Government Resolution dated 6th April, 2002 and its effect upon the petitioner's liability under the Act of 1952. This necessitates reconsideration of the impugned order dated 1st September, 2006 and recomputation of the outstanding EPF dues of the petitioner-Institution.

For the aforesaid reasons, the impugned order

dated 1st September, 2006 is quashed and set-aside. The consequent action of the respondent authority in freezing the bank accounts of the petitioner-Institution is also quashed and set-aside.

It is clarified that this order shall not preclude the respondent authority from taking action against the petitioner under Section 7A of the Act of 1952 afresh. While recalculating the outstanding EPF dues of the petitioner-Institution the respondent authority shall also take into consideration the above referred Government Resolution dated 6th April, 2002. It is further clarified that in the event the respondent authority issues a notice to show-cause, as envisaged by Section 7A of the Act of 1952, the petitioner shall submit a written reply with all necessary documentary evidence, within the time specified in the notice or within such time as may be extended by the respondent authority.

Subject to the above clarifications the petition is allowed. Rule is made absolute. The parties shall bear their own cost. Civil Applications stand

disposed of.

(Ms. R.M.Doshit, J.)

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